

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WAY CHOR LAM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C07-490-MJP-JPD
(CR06-208-MJP)

REPORT AND RECOMMENDATION

On April 3, 2007, petitioner Way Chor Lam filed a motion under 28 U.S.C. § 2255 seeking to vacate, set aside, or correct the sentence imposed upon her following her guilty plea to a charge of conspiracy to distribute a controlled substance. In each of the four grounds for relief presented to the Court for consideration, petitioner identifies sentencing factors which she suggests warrant a reduction in the 46 month sentence she is currently serving. After reviewing petitioner's motion, this Court concluded that petitioner had not presented any cognizable ground for relief. Accordingly, on May 8, 2007, this Court issued an Order directing petitioner to show cause why her § 2255 motion should not be denied.

The Court explained in its Order to Show Cause that the sentencing court is authorized under § 2255 to vacate, set aside or correct a sentence if it concludes that "the sentence was imposed in

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1 violation of the Constitution or laws of the United States, or that the court was without jurisdiction
2 to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is
3 otherwise subject to collateral attack." 28 U.S.C. § 2255 (1996). The Court further explained that
4 non-constitutional sentencing errors which were not challenged in an earlier proceeding are waived
5 and are generally not reviewable under § 2255. *United States v. Schlesinger*, 49 F.3d 483, 485 (9th
6 Cir. 1995). Petitioner was advised that the sentencing claims raised in her motion, none of which
7 alleged a violation of the Constitution or laws of the United States, appeared to have been waived
8 because there was no indication in the record that she ever sought to challenge her sentence in any
9 earlier proceeding.

10 On May 29, 2007, petitioner filed a response to the Order to Show Cause. She identifies in
11 her response a number of factors which she believes justify a reduction in her sentence. However,
12 petitioner once again fails to identify any issue which implicates constitutional concerns, or is
13 otherwise cognizable in a proceeding brought under § 2255. While petitioner does indicate in her
14 response that she filed an appeal, the record of petitioner's criminal proceedings does not reflect that
15 any appeal has ever been filed.

16 As petitioner has not presented to the Court any claims which are reviewable under § 2255,
17 this Court recommends that petitioner's § 2255 motion be denied. A proposed order accompanies
18 this Report and Recommendation.

19 DATED this 13th day of July, 2007.

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22 JAMES P. DONOHUE
23 United States Magistrate Judge
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